

*Effective  
November 20, 1984*

224-010665

Original Title Page  
PARN/Skagway Terminal  
FMC Agreement No.

RECEIVED  
'84 OCT 24 P4:17

FEDERAL MARITIME  
COMMISSION  
OFFICE OF THE SECRETARY

THE PACIFIC AND ARCTIC RAILWAY  
AND NAVIGATION COMPANY/SKAGWAY  
TERMINAL COMPANY MARINE  
TERMINAL OPERATORS' AGREEMENT

Dated: October 23, 1984

TABLE OF CONTENTS

<u>TITLE</u>	<u>PAGE</u>
1. The Parties . . . . .	2
1.1 Agreement . . . . .	2
1.2 PARN . . . . .	2
1.3 Skagway Terminal Company . . . . .	2
2. General Purpose . . . . .	2
3. Lease Provisions . . . . .	2
3.1 City of Skagway/PARN Lease . . . . .	2
3.2 PARN/Skagway Terminal Sublease . . . . .	3
4. Joint Actions on Conditions of Service . . . . .	3
4.1 Rates, Charges and Conditions of Service . . . . .	3
4.2 Tariffs . . . . .	3
5. Cooperative Working Arrangements . . . . .	3
5.1 Other Discussions . . . . .	3
5.2 Rationalization of Services . . . . .	3
5.3 Cooperative Procurement . . . . .	3
5.4 Corporate Formalities . . . . .	4
6. Implementation Procedures . . . . .	4
6.1 Meetings . . . . .	4
6.2 Responsible Officials . . . . .	4
6.3 Agents . . . . .	4
6.4 Effective Date . . . . .	5
7. Signatures . . . . .	6

## 1. THE PARTIES

1.1 THIS AGREEMENT is between The Pacific and Arctic Railway and Navigation Company (PARN) and Skagway Terminal Company (Skagway Terminal).

1.2 PARN. PARN is a wholly owned corporate subsidiary of White Pass Transportation, Inc., organized under the laws of the State of Alaska. It operates a railroad between the Alaska/British Columbia border and Skagway, Alaska, and a marine terminal in the Skagway harbor. At the marine terminal, PARN furnishes wharfage, dock, warehouse and other terminal facilities in connection with common carriers operating in the foreign commerce of the United States.

1.3 SKAGWAY TERMINAL. Skagway Terminal is a separate, wholly owned corporate subsidiary of White Pass Transportation, Inc., organized under the laws of the State of Alaska. Pursuant to a sublease agreement with PARN, Skagway Terminal operates a separate marine terminal in the Skagway harbor. At its terminal, Skagway Terminal also furnishes wharfage, dock, warehouse and other terminal facilities in connection with common carriers operating in the foreign commerce of the United States.

## 2. GENERAL PURPOSE

PARN and Skagway are both committed to providing efficient and economic marine terminal services at Skagway, Alaska. They have determined that they can meet these objectives only by cooperating with each other, by sharing common corporate resources and by operating an integrated marine terminal system at Skagway.

NOW THEREFORE, PARN and Skagway Terminal agree as follows:

## 3. LEASE PROVISIONS

3.1 CITY OF SKAGWAY/PARN LEASE. PARN is the lessee of approximately 70.226 acres of tidelands at Skagway harbor, pursuant to a lease from the City of Skagway, Alaska, dated March 19, 1958.



3.2 PARN/SKAGWAY TERMINAL SUBLEASE. By a sublease dated April 1, 1981 (Exhibit 1), PARN subleased approximately 50.1494 acres of the tidelands noted above to Skagway Terminal. From April 1, 1981, to the present, PARN and Skagway Terminal have maintained a landlord/tenant relationship with respect to the marine terminal facilities located in the sublease area. PARN and Skagway hereby incorporate their existing sublease by reference into this agreement.

4.1 JOINT ACTIONS ON  
CONDITIONS OF SERVICE

4.1 RATES, CHARGES AND CONDITIONS OF SERVICE. PARN and Skagway Terminal, acting through their respective officers, directors, employees and agents, shall meet from time to time to discuss, fix and/or regulate rates and charges and conditions of service at their marine terminal facilities.

4.2 TARIFFS. PARN and Skagway Terminal may, but are not required to, publish a joint tariff covering marine terminal rates, charges and regulations at their respective facilities.

5. COOPERATIVE WORKING ARRANGEMENTS

5.1 OTHER DISCUSSIONS. Representatives of PARN and Skagway Terminal shall meet from time to time to discuss and exchange information on: terminal costs; operating experiences; development and marketing plans; customers' credit histories; and all other issues of concern to the marine terminal industry.

5.2 RATIONALIZATION OF SERVICES. PARN and Skagway Terminal may, but are not required to, rationalize services at their respective facilities by: directing vessels to call at specified facilities; directing inland carriers to load or unload cargoes at specified facilities; and otherwise operating their facilities as an integrated marine terminal system.

5.3 COOPERATIVE PROCUREMENT. PARN and Skagway Terminal may, but are not required to, engage in joint activities to: procure the services of management, stevedores, longshoremen, accountants, attorneys, and other employees, contractors and agents required in the operation of their facilities; purchase supplies and equipment used at their facilities; advertise their facilities; and otherwise act in concert to reduce their costs of providing terminal services.

5.4 CORPORATE FORMALITIES. PARN and Skagway Terminal shall maintain their separate corporate structures, accounts and records. All joint expenses incurred pursuant to this agreement shall be allocated to each party pursuant to arms-length transaction principles. If either party provides equipment, supplies, services or other corporate resources to the other, it shall be entitled to and shall demand appropriate reimbursement.

## 6. IMPLEMENTATION PROCEDURES

6.1 MEETINGS. All meetings held pursuant to this agreement shall be held at the convenience of the designated representatives of PARN and Skagway Terminal, subject only to the requirement that the parties shall observe all applicable requirements of the United States Federal Maritime Commission (the Commission) relating to the submission of minutes of such meetings.

6.2 RESPONSIBLE OFFICIALS. The parties hereby delegate responsibility to the following corporate officials for all matters arising under this agreement:

PARN: Thomas H. King  
President  
P. O. Box 4070  
Whitehorse, Yukon Canada Y1A3T1

Skagway Terminal: Marvin P. Taylor  
Vice President and  
General Manager  
P. O. Box 435  
Skagway, Alaska 99840

6.3 AGENTS: The parties hereby delegate authority to the following agents to act on their behalf (in coordination with the corporate officials named above) on all matters relating to this agreement:

John C. Kirtland, Esq.  
Robert L. McGeorge, Esq.  
The law firm of Bishop, Liberman,  
Cook, Purcell & Reynolds  
Washington, D.C.

Original Page No. 5  
PARN/Skagway Terminal  
FMC Agreement No.


6.4 EFFECTIVE DATE. This agreement shall be submitted to the Commission pursuant to section 5 of the Shipping Act of 1984 and shall commence on the effective date established by section 6(c) of that Act.

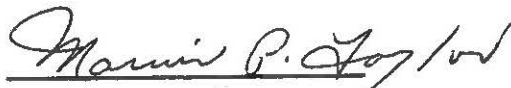
7. SIGNATURES

The duly authorized representatives of PARN and Skagway Terminal have executed this agreement at Vancouver, Canada this 23rd day of October, 1984.

The Pacific and Arctic Railway  
and Navigation Company

Skagway Terminal  
Company

By   
Thomas H. King  
President

By   
Marvin P. Taylor  
Vice President and  
General Manager



SUBLEASE

This Agreement made as of the 1st day of April, 1981.

BETWEEN:

PACIFIC AND ARCTIC RAILWAY AND  
NAVIGATION COMPANY, a corporation  
organized under the laws of Alaska  
(hereinafter referred to as the  
"Sublessor")

OF THE FIRST PART

AND:

SKAGWAY TERMINAL COMPANY, a  
corporation organized under the  
laws of Alaska (hereinafter  
referred to as the "Sublessee")

OF THE SECOND PART

WHEREAS:

- A. By a lease (the "Lease") made March 19, 1968, the City of Skagway (the "City") leased certain tidelands (the "Leased Lands") to Pacific and Arctic Railway and Navigation Company ("PARN"), a company incorporated under the laws of West Virginia, for a term of fifty-five years terminating on March 18, 2023, and with certain rights to renew;
- B. The Sublessor is the successor to PARN as a result of a merger on December 20, 1979;
- C. By agreement dated as of January 1, 1981 (the "Shipping Agreement"), the Sublessor granted to Cyprus Anvil Mining Corporation



("Anvil") an option (the "Option") to sublease from the Sublessor the portion of the Leased Lands shown outlined in red on Schedule "A" hereto (the "Subleased Lands");

D. The Sublessor agrees to sublease the Subleased Lands to the Sublessee for a term corresponding to the initial term of the Lease less a day and upon the terms and conditions contained herein, subject to earlier termination if Anvil exercises its Option or as otherwise provided herein;

E. As required, the City Council of Skagway ("Council") has approved the sublease of the Subleased Lands to the Sublessee.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT:

1. In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Sublessee to be paid, observed and performed, the Sublessor hereby subleases unto the Sublessee the Subleased Lands.

2. This Sublease is for a term commencing on the date hereof and, subject to paragraph 15 herein, terminating March 17, 2023.

3. The Sublessee shall pay, and the Sublessor agrees to accept, as rent for the use of the Subleased Lands and the

privileges granted under this Sublease, an annual rental of 78.5% of the annual rent payable under the Lease from time to time, payable in equal monthly instalments in advance, on or before the ninth day of each month throughout the term of this Sublease.

4. The Sublessee shall pay to the Sublessor 78.5% of all real property taxes charged or imposed against the Leased Lands by the City, except such taxes as are referred to in paragraph 5 herein.

5. The Sublessee shall pay to the Sublessor all real property taxes imposed or charged by the City against the improvements on the Subleased Lands and all personal property taxes or other taxes and charges imposed by the City against the Subleased Lands or the Sublessee's operations on the Subleased Lands.

6. The Sublessee may exercise all those rights and privileges and shall assume and be subject to all those obligations of the Sublessor in respect of the Subleased Lands. The Sublessee agrees to be bound by and to comply with the terms and conditions of the Lease, a copy of which the Sublessee hereby acknowledges having received.

7. The Sublessor and its employees, agents, customers, licensees and invitees shall have the right to reasonable access to and egress from the Subleased Lands during the term

hereof, and the Sublessee and its employees, agents, customers, licencees and invitees shall have the right to reasonable access to and egress from the Leased Lands (other than the portion thereof which constitute the Subleased Lands).

8. In the event of cancellation or forfeiture of this Sublease for cause, the Sublessor shall endeavour to give a duplicate copy of any notice of default to the holder of a mortgage of the improvements on the Subleased Lands that the Sublessor has consented to pursuant to subparagraph 14(h), and every assignee or sub-sublessee that the Sublessor and the Council have consented to pursuant to subparagraph 14(f), in the same manner as notice is given herein to the Sublessee, provided however that the Sublessor's failure to comply with the terms of this paragraph 8 shall not invalidate the termination of this Sublease.

9. In the event the Sublease herein is terminated, or in the event the Subleased Lands or any part thereof are abandoned by the Sublessee during the term hereof, the Sublessor, or its agents, servants or representatives may, immediately or at any time thereafter, re-enter and assume possession of the Subleased Lands or such part thereof, and remove all persons and property therefrom. No re-entry by the Sublessor shall be deemed an acceptance of a surrender of the Sublease herein.

10. In the event that the Sublease herein should be



terminated because of any breach by the Sublessee, the monthly rental payment last made by the Sublessee shall be forfeited and retained by the Sublessor.

11. The receipt of rent by the Sublessor with knowledge of any breach of the Sublease herein by the Sublessee, or of any default on the part of the Sublessee in the observance or performance of any of the conditions or covenants of this Sublease, shall not be deemed to be a waiver by the Sublessor of any provision of this Sublease. No failure on the part of the Sublessor to enforce any covenant or provision contained herein, nor any waiver of any right herein by the Sublessor, unless such waiver be in writing, shall discharge or invalidate such covenants or provisions or affect the right of the Sublessor to enforce the same in the event of any subsequent or continuing breach or default. The receipt by the Sublessor of any rent or other sum of money after the termination or giving of notice of termination by the Sublessor of this Sublease shall not reinstate or extend the term hereof or create a new term in respect of the Subleased Lands, nor shall it destroy or impair the efficacy of such termination or notice of termination as may have been given by the Sublessor to the Sublessee prior to the receipt of any such rent or other sum of money, unless agreed to in writing by the Sublessor.

12. The Sublessee shall peaceably and quietly leave, surrender and yield unto the Sublessor the Subleased Lands upon



termination of this Sublease.

13. The Sublessee may, within 60 calendar days, or such longer period as may be agreed to in writing by the Sublessor, after termination of this Sublease remove such tenant's fixtures and chattels from the Subleased Lands as are owned by it, or it may, with the prior written consent of the Sublessor, sell such tenant's fixtures and chattels to a succeeding sublessee, provided however that the Sublessee shall pay rent to the Sublessor in respect of such number of days as it overholds upon the Subleased Lands pursuant to this paragraph, such rent to be pro-rated based upon the rent paid hereunder by the Sublessee in the final twelve months of the term hereof. The Sublessee shall reimburse the Sublessor for any repairs necessitated by the removal of any tenant's fixtures or chattels from the Subleased Premises. Any tenant's fixtures or chattels not removed from the Subleased Premises and all improvements and fixtures (other than tenant's fixtures) will be the property of the Sublessor without compensation to the Sublessee.

14. The Sublessee covenants with the Sublessor as follows:

- (a) to pay the rent as aforesaid;
- (b) to comply with all the terms and conditions of the Lease and perform all the obligations of the Sublessor thereunder with respect to the Subleased Lands;

- (c) to pay and discharge as the Sublessor shall direct all such real property taxes, personal property taxes and other taxes imposed or charged during the term of this Sublease and payable in accordance with the terms of paragraphs 4 and 5 herein, the amount of any such payment, if not so paid, to be deemed to be additional rent under this Sublease;
- (d) to permit the City and the Sublessor, and persons authorized by them, at all reasonable times to enter and examine the condition of the Subleased Lands, and upon notice by either of them to repair in accordance with such notice;
- (e) to indemnify the Sublessor against all losses, costs and other expenses arising out of the breach by the Sublessee of any covenant or other provision of this Sublease;
- (f) not to assign, sublet or part with possession of any part of the Subleased Lands without the consent in writing of the Sublessor and of the Council, which consent may be withheld by the Sublessor notwithstanding any statutory provisions respecting the withholding of consent without giving reason therefor;
- (g) not to do or permit to be done any act in respect of the Subleased Lands, or otherwise, which would impair or limit the Sublessor's ability to comply with its

including its obligations to Anvil under the Option, all of which obligations the Sublessee acknowledges having been given notice of;

- (h) not to mortgage, charge or otherwise encumber its interest in this Sublease without the consent of the Sublessor.

15. This Sublease shall be terminated:

- (a) upon termination or cancellation of the Lease for any reason;
- (b) 30 days following the date on which the Sublessor has given the Sublessee notice of the breach by the Sublessee of any of the covenants contained in the Sublease, unless the Sublessor shall have waived the breach during such 30 day period or the breach has been cured during that period;
- (c) in the event that Anvil gives notice of its intention to exercise the Option and the Council approves the granting of a sublease to Anvil, on the day before the date upon which the sublease to Anvil is to take effect;
- (d) in the event that the City severs the Lease and grants to the Sublessee or Anvil a lease of the Subleased Lands, on the date upon which such lease takes effect; or
- (e) upon a change of control of the Sublessee, at the option of the Sublessor.



16. The Sublessor and Sublessee agree to do all such acts and things and to execute all such agreements, instruments and consents as may be required to enable the Lease to be severed and to have the City grant the Sublessee or Anvil a lease of the Subleased Lands and the Sublessor a lease of the remainder of the Leased Lands, as contemplated by subparagraph 22(n) of the said Shipping Agreement.

17. In the event of any assignment of this Sublease consented to by the Sublessor and the Council in accordance with the provisions of subparagraph 14(f), the same shall enure to the benefit of, and be binding upon the Sublessee and the assignee. This Sublease shall also enure to the benefit of, and be binding upon, any successor to the Sublessor.

18. In the event of a change of control of the Sublessee after the date hereof, and where the Sublessor elects not to terminate this Sublease pursuant to subparagraph 15(e), the Sublessor shall have the right to impose such further terms and conditions hereunder as it may deem appropriate at the time of such change of control. For purposes of subparagraph 15(e) and this paragraph 18 "control" shall include, without limitation, the right to exercise a majority of the votes which may be cast at a general meeting of the Sublessee, and the right to elect or appoint, directly or indirectly, a majority of the directors of



the Sublessee or other persons who have the right to manage or supervise the management of the affairs and business of the Sublessee.

19. Any notice required to be given hereunder or any delivery of payments or documents referred to herein may be delivered personally or may be mailed by registered mail, postage prepaid, addressed as follows:

to the Sublessor:

Pacific and Arctic Railway and  
Navigation Company  
P.O. Box 4070  
Whitehorse, Yukon  
Y1A 3T1

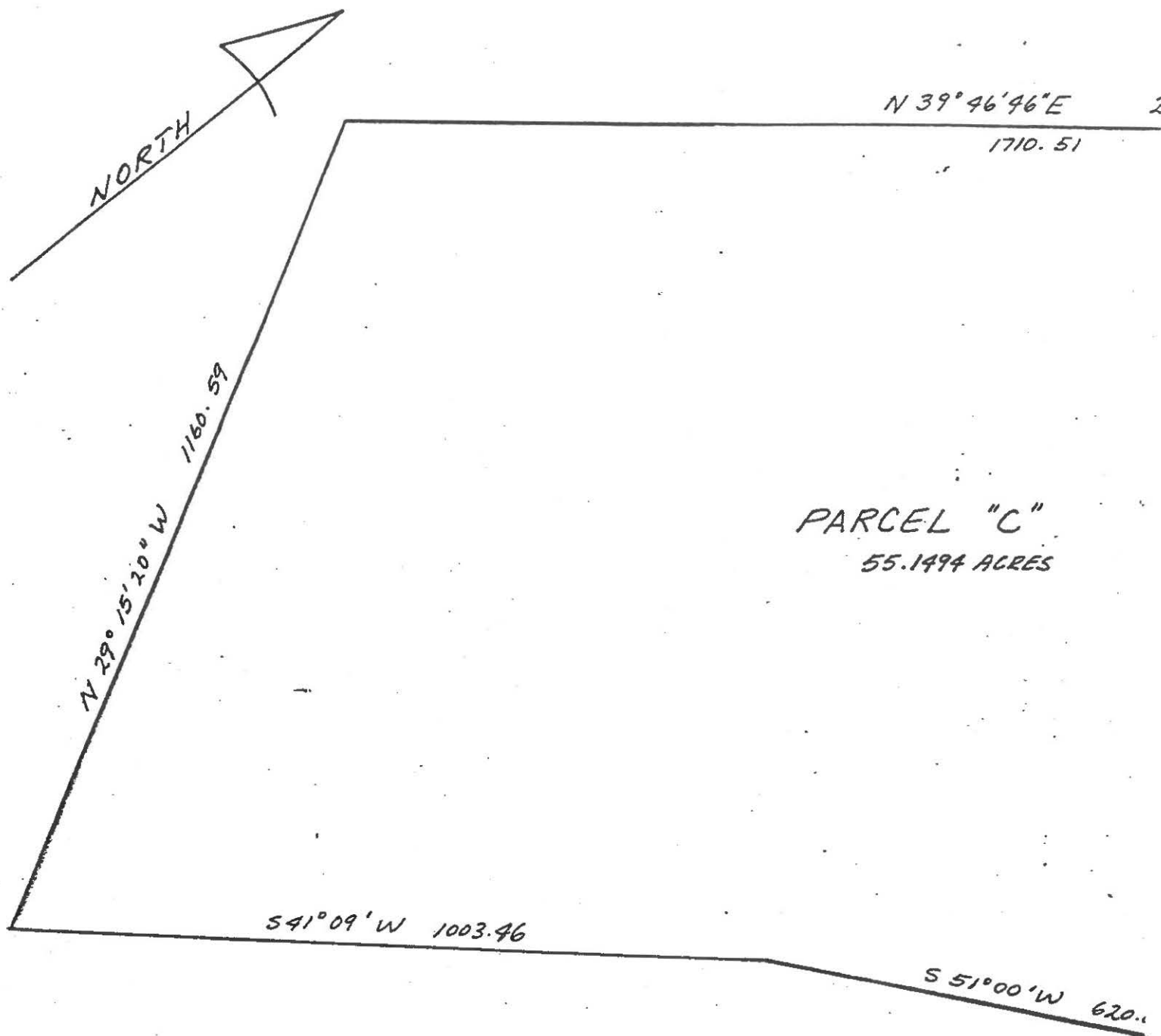
to the Sublessee:

Skagway Terminal Company  
P.O. Box 4070  
Whitehorse, Yukon  
Y1A 3T1

or at such other address as may from time to time be notified in writing by either of the parties hereto. Any such notice shall be deemed to have been given, if delivered by hand, on the date delivered and, if mailed, on the third business day following the date of posting, PROVIDED that if there shall be between the time of mailing and the actual receipt of the notice a mail strike, slow-down or other labour dispute which might affect delivery of such notice by the mails, then such notice shall be effective only when actually delivered.

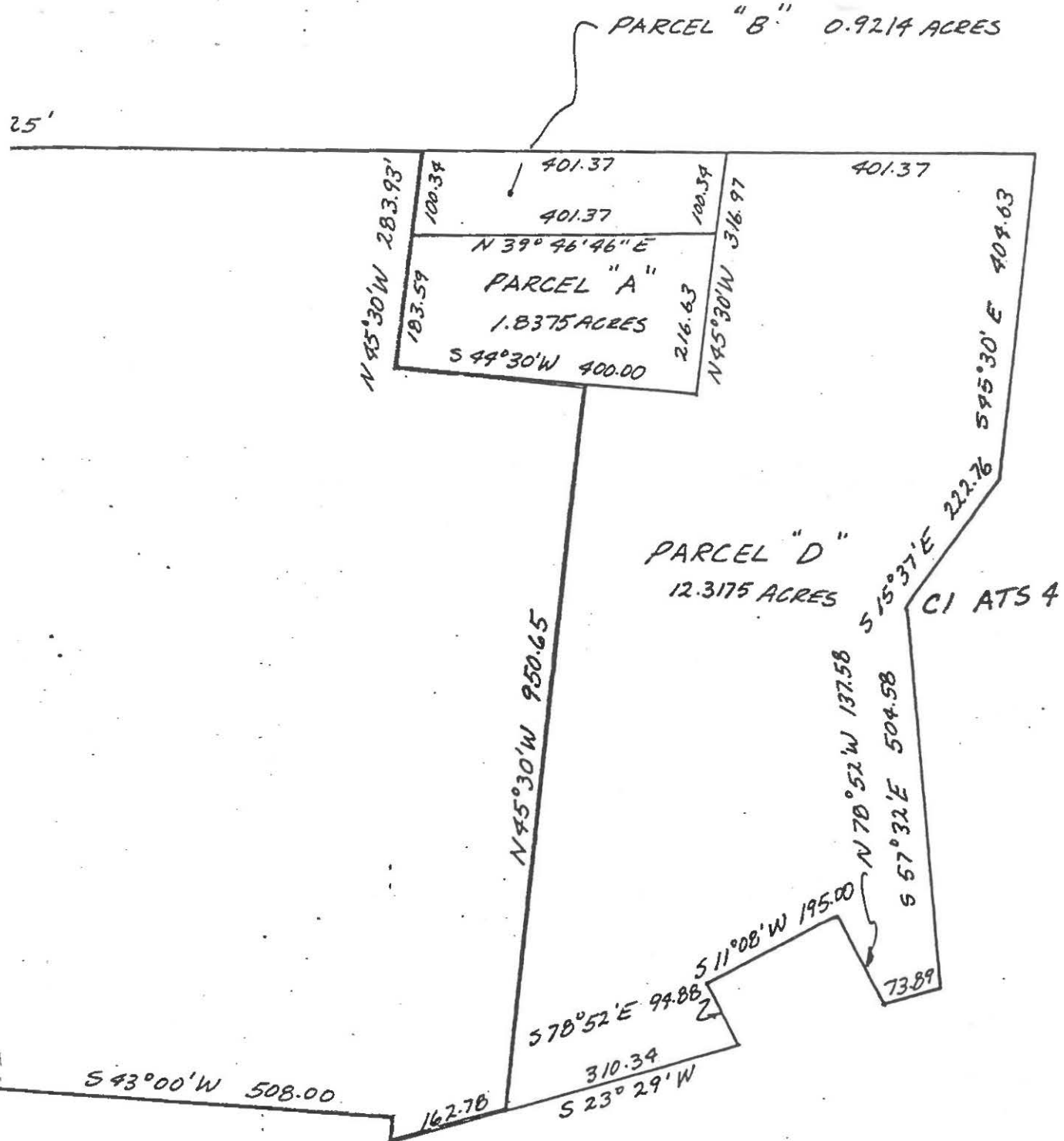
In witness whereof the parties hereto have caused this instrument to be executed by their duly authorized officers on the date first above written.

The Corporate Seal of SKAGWAY  
TERMINAL COMPANY was hereunto  
affixed in the presence of:



NOTE:

BASIS BEARINGS THIS SURVEY  
FROM RECOVERED ATS 4 MONUMENTS  
CORRECTION IN AZIMUTH STATE PLANE GRID TO ATS 4 =  $-1^{\circ} 18' 49''$



SCHEDULE "A"

A SUBDIVISION OF A PORTION OF ATS 4  
CITY OF SKAGWAY

SCALE: 1"=200'

APPROVED BY:

DRAWN BY DSM

DATE: 7-23-81

REVISED 8-5-81

**D.S. MILLER — CIVIL ENGINEERING**

P&A.R. & NAV. CO. LEASE

DRAWING NUMBER

176-2



**DATED: April 1, 1981**

---

**BETWEEN:**

**PACIFIC AND ARCTIC RAILWAY AND  
NAVIGATION COMPANY**

**OF THE FIRST PART**

**AND:**

**SKAGWAY TERMINAL COMPANY**

**OF THE SECOND PART**

---

**SUBLEASE**

---

---

**DAVIS & COMPANY**

**Dealers & Collectors SM/ts**

**14th Floor - 1030 West Georgia Street**

**Vancouver, B.C. V6E 3C2**

**Tel. 687-9444**